

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Sammie Led Beck  
SSN XXX-XX-3835  
Debora Ann Beck  
SSN XXX-XX-7176

**CASE NO. 04-34945 DDO**

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Washington Mutual (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 13, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 8, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 4, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on August 23, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$77,100.00, as evidenced by that certain mortgage deed dated January 30, 1998, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated January 30, 1998, executed by Sammie Beck and Debora Beck, husband and wife, recorded on March 3, 1998, as Document No. 1480457, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Dakota County, Minnesota and is legally described as follows to-wit:

Unit Number 9103 Lexington Place Condominium, Dakota County, Minnesota.  
Condominium File No. 66.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 16, 2004, Debtor is delinquent in the making of monthly payments as required for the months of July, 2004 through September, 2004, inclusive, in the amount of \$617.56 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its

rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be terminated so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 16th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

1480457

OFFICE OF THE COUNTY RECORDER  
DAKOTA COUNTY, MINNESOTA  
CERTIFIED THAT THE WITHIN INSTRUMENT  
WAS RECORDED IN THIS OFFICE ON AND AT  
1998 MAR -3 A 10 25

DOC. NO. **1480457**  
JOEL T. BECKMAN, COUNTY RECORDER  
BY: *[Signature]* Deputy  
FEE 15.00 SURCHARGE 4.00  
CASH ☐ CHECK ☐ ESCROW ☐

WELL ☐ CHARGE ☐  
CHARGE TO: \_\_\_\_\_  
OR \_\_\_\_\_

DO NOT REMOVE

UNIVERSAL TITLE

1480457

LOAN NO. 048038

(Space Above This Line For Recording Data)

**MORTGAGE**

FHA Case No.  
271-7760152-734

THIS MORTGAGE ("Security Instrument") is given on JANUARY 30, 1998  
is SAMMIE BECK AND DEBORA BECK, HUSBAND AND WIFE

The mortgagor

whose address is 7755 HAVENWOOD CIRCLE  
WOODBURY, MN 55125

("Borrower").

This Security Instrument is given to PRIME MORTGAGE CORPORATION

which is organized and existing under the laws of THE STATE OF STATE OF MN  
address is 435 FORD ROAD, SUITE 120  
MINNEAPOLIS, MN 55426

, and whose

("Lender").

Borrower owes Lender the principal sum of  
SEVENTY-SEVEN THOUSAND ONE HUNDRED AND 00/100

Dollars (U.S. \$ 77,100.00 ). This debt is evidenced by Borrower's note dated the same date as  
this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid  
earlier, due and payable on FEBRUARY 1, 2028 . This Security Instrument secures to

Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and  
modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to  
protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and  
agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby  
mortgage, grant and convey to the Lender, with the power of sale, the following described property located in  
DAKOTA  
County, Minnesota:

Unit Number 9103 Lexington Place Condominium, Dakota County, Minnesota. Condominium File No. 66.

UNIVERSAL TITLE  
METRO PRODUCTION  
7777 WASHINGTON AVE  
EDINA, MN 55439

14-516563T

MINNESOTA - Single Family - FHA Security Instrument  
Form 94124 1/96  
Laser Forms Inc. (800) 446-3555  
LIFT #FHA94124 3/96

Page 1 of 7

Initials: *DB DB*

VALIDATE \*\*\*\*\*  
8586 DINA  
02/23/1998 08:48:35 357481 MORT  
THOMAS V NOVAK, DAKOTA COUNTY TREAS.  
REGISTRATION TAX 177.33  
COUNTY CONSERVATION FEE 5.00  
RECEIPT NUMBER 318008  
\*\*\*\*\*

RECEIVED

FEB 18 1998

EXHIBIT *A*

which has the address of 3560 BLUE JAY WAY #103

EAGAN

(Street)

(City)

Minnesota 55123

("Property Address");

(Zip Code)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

**THIS SECURITY INSTRUMENT** combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds".

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

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SSN XXX-XX-3835  
Debora Ann Beck  
SSN XXX-XX-7176

**CASE NO. 04-34945 DDO**

Debtor.

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 16, 2004, Debtor is delinquent for monthly payments for the months of monthly payments as required for the months of July, 2004 through September, 2004, in the amount of \$617.56 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

**CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent

with the attached proposed Order.

Dated this 16th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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CASE NO. 04-34945 DDO

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SSN XXX-XX-3835  
Debora Ann Beck  
SSN XXX-XX-7176

Debtor.

AFFIDAVIT OF  
~~DAN ARNTSEN~~

*Pamela Beck Ganssen*

*Pamela Beck Ganssen*  
~~Dan Arntsen~~, being first duly sworn on oath, deposes and states:

1. That he is the ~~Bankruptcy Manager~~ *Vice President* of Fidelity National Foreclosure Services.

2. Washington Mutual, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated January 30, 1998, executed by Sammie Beck and Debora Beck, husband and wife, recorded March 3, 1998, as Document No. 1480457. The property is located in Dakota County, Minnesota and is legally described as follows, to-wit:

Unit Number 9103 Lexington Place Condominium, Dakota County, Minnesota. Condominium File No. 66.

3. That he has reviewed the account records relating to the Beck's mortgage loan, account no. 8473653148.

4. That as of September 10, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$71,560.52
Interest through September 10, 2004	1,376.73
Attorney's Fees:	700.00
Late Charges:	74.10
Pro Rata MIP/PMI:	29.55
Other Fees:	42.80
NSF Fees:	24.70

TOTAL: \$73,808.40

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of July, 2004 through September, 2004 in the amount of \$617.56 each.

6. This affidavit is given in support of the motion of Washington Mutual for relief from the automatic stay.

FIDELITY NATIONAL FORECLOSURE SERVICES

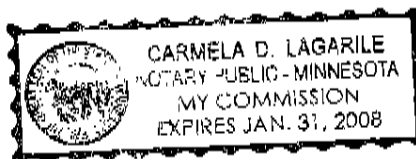
By

*Pamela Beck Ganssen*  
~~Dan Arntsen~~ *Pamela Beck Ganssen*  
Its Bankruptcy Manager *Vice President*

Subscribed and sworn to before me  
this 10 day of September, 2004.

*Carmela D. Lagarile*

Notary Public  
9733\_1





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Debora Ann Beck  
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Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on September 16, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Pamela Beck-Janssen, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Sammie Led Beck  
3560 Blue Jay Way Apt 103  
Eagan, MN 55123

Michael J. Iannacone  
8687 Eagle Point Blvd  
Lake Elmo, MN 55042

Debora Ann Beck  
1455 55<sup>th</sup> St E Apt 117  
Inver Grove Heights, MN 55077

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

Mary E. Lockwood  
2233 N. Hamline Ave Ste 200  
Roseville, MN 55113

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 16th day of September, 2004.

/e/ Diana Waletzko

Diana Waletzko

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---

**ORDER**

The above entitled matter came on for hearing upon motion of Washington Mutual (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 13, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated January 30, 1998, executed by Sammie Beck and Debora Beck, husband and wife, recorded on March 3, 1998, as Document No. 1480457 covering real estate located in Dakota County, Minnesota, legally described as follows, to-wit:

Unit Number 9103 Lexington Place Condominium, Dakota County, Minnesota. Condominium File No. 66 and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3),  
this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Bankruptcy Court